IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO: 4751 of 2005

Between:

S.Sandhyavathi, W/o.Swamidas Christian,
R/o.Plot No.24, Uppalkalan, Uppal, Hyderabad.

.... PETITIONER

AND

1 The Director, Women Development and Child Welfare
Hyderabad, Vengalraonagar.
2 The Officer-in-charge Sishu Vihar, State Home
Vengalraonagar, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus, declaring the impugned proceedings of the First Respondent in the L. Dis No.Lr.No.11402/1/2002 dt.31.3. 2003 as illegal, arbitrary against the Principles of Natural Justice and violative of Article 21 of Constitution of India, and consequently direct the respondent to consider afresh the request of the petitioner for adoption of Minor girl child baby Namrata on such terms and conditions keeping in view of the welfare of the Girl Child in terms of Guardian Wards Act by setting aside the impugned order dt.31.3.2003 and pass such other order or orders.

Counsel for the Petitioner: MR.J.U.M.V.PRASAD

Counsel for the Respondents: GP FOR WOMEN DEV. & CHILD WELFARE

The Court at the admission stage made the following:

ORDER:

This writ petition is filed seeking a writ of *Mandamus* declaring the proceedings of the first respondent in Lr.No.11402/01/2002, Dt.31.3.2003 as illegal and arbitrary.

2. The brief facts that are necessary for disposal of the present writ petition may be stated as follows:

The petitioner is working as a Teacher drawing considerable salary. Her husband is preaching the word of God to the prisoners and rehabilitating them after their sentence. When a girl baby aged about 20 days was brought to the petitioner, she took the minor child and nursed her by taking her to the doctor. One Sunith Kumar, in an unpleasant situation has taken away the child. Therefore, petitioner represented to the first respondent what had happened from the beginning. Petitioner requested the first respondent for adoption of baby Namratha. Though the petitioner is having three major children, both the parents and three children given an undertaking by executing document to give a share in property to baby Namratha. Without considering all these aspects, the impugned proceedings have been passed.

3. A detailed counter affidavit has been filed stating that as per CARA guidelines, the age of the child is not matched with the age of the petitioner, and therefore, she is not eligible to adopt the minor girl baby Namratha. Namratha was still residing in Sishuvihar due to her case pending in Family Court. There are number of prospective parents who are not having single child and waiting for their turn. At this moment, giving child to parents who are having three biological children is not justifiable. Hence the respondents pray to dismiss the petition.

4. Learned counsel for the petitioner contended that the age of the husband of the writ petitioner is 50 years and therefore age of the parents has to be taken into consideration. If the age of the adoptive parents is taken into consideration, the age is matching and it is in accordance with the CARA guidelines. The petitioner will bring up the child as if she is her own child and they will also give a share in the property to the child in view of the fact that the writ petitioner had taken care of the baby at the age of 20 days. But, under peculiar circumstances, the minor baby was taken away from the house and kept in Sishu Vihar and hence she prays to set aside the impugned order.

5. On the other hand, learned Government Pleader for Women and Child Welfare contended that the age of the child is not matching with the age of the petitioner and therefore, she is not eligible to adopt the minor girl and further, the adoptive parents are both employed and are having three major children and getting education in higher qualifications and there appears no reason for the adoptive parents to adopt a child at this age when number of applications have been pending for consideration.

6. As per CARA guidelines Lr.No.1-2-2003-CARA (PA) dated 16.10.2003, which reads:

> "in case of older adoptive parents the age of the child has to commensurate as far as possible with the age difference of the parent. e.g. a child aged one year may be placed with a 46 year old, 2 years with a 47 year old etc.".

7. Though the petitioner was aged about 45 years, according to learned counsel for the petitioner, her husband is aged about 50 years. If the average age of the adoptive parents is taken into consideration, it will come to about 47 years. Therefore, the contention of the learned Government Pleader cannot be accepted. Hence, Lr.No.1-2-2003 dated 16.10.2003 does not come in the way of respondents in giving adoption to the petitioner.

8. Respondents sought for legal opinion. Basing on the legal opinion since the adoptive parents are both employed and are having three major children and getting education in higher qualifications, there appears no reason for the adoptive parents to adopt a child at this age without any proper reason. That may not be factually correct in view of the fact that the petitioner is taking care of the minor Namratha when she was aged about 20 days, till 1½ years the child was reared and brought up by the petitioner. There is every possibility for developing intimacy with the child and perhaps that is the reason why petitioner is also prepared to give a share in the property along with her three major children. Ultimately, the welfare of the child is of paramount consideration and if the child is given in adoption, the welfare of the child will be taken care by the adoptive parents. These aspects have not been considered by the respondents.

9. The respondents shall take appropriate decision considering the welfare of the child, the share in the property that may be given by the petitioner. Hence, the impugned order is set aside and the matter is remitted to the respondents to take appropriate decision keeping in view the welfare of the child as of paramount importance, within a period of two months from the date of receipt of copy of this order. The petitioner is entitled to see the girl baby Namratha every week with prior permission of the Director of Sishu Vihar.

10. The writ petition is disposed of accordingly. No costs.

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K.C.BHANU, J

Dated: 6.4.2005

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To

1 The Director, Women Development and Child Welfare
Hyderabad, Vengalraonagar.
2 The Officer-in-charge Sisu Vihar, State Home
Vengalraonagar, Hyderabad.

3 Two CCs to the Govt. Pleader, Women Welfare and Child Welfare, High Court of A.P., Hyderabad(O.U.T).

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